



MEMORANDUM REGARDING PUBLIC ACT 99 OF 2014

AND

THE LEGISLATIVE HISTORY

Subject: Mailing of the various permissible forms of payment in a purchase transaction.

Section 6 of the Act, in its entirety and particularly Section 6(5) of the Act, applies only to catalytic converters, air conditioners; and components and copper wire and does not apply to other scrap metal as directed by the language of the Act and the legislative history.

A. The Act.

1. Section 5 directs that unless section 6 applies, payment for the purchase of all scrap metal may be made by check or money order, electronic payment card or encrypted receipt that may be converted to cash only in an automated teller machine located at the dealer's premises; provided in each circumstance a photograph is taken of the seller's face upon delivery of the form of payment.
2. Section 6 is the regulatory section addressing what had been identified as certain scrap metal items which had a propensity of higher theft incidences. Those items are listed in Section 6(1)(a) to (c) and for this summary are described as "High Theft Items". In furtherance of the greater regulatory oversight of the High Theft Items, each subsection of Section 6 is tailored to and only addresses the High Theft Items.
 - a. The application of Section 6(5) is directed through, and only through, the provisions of Section 6(1). Section 6(1) addresses **only** purchase transactions of the High Theft Items. Section 6(1) allows for payment by direct deposit or electronic deposit to the Seller's bank account. However, if a check or electronic payment card or encrypted receipt is to be used, those forms of payment must be mailed as provided in Section 6(5). **Section 6(1) does not reference Section 6(5) for payment rules for the purchase of any type of scrap metal other than the**

High Theft Items. Section 6(1) is the only section of the Act which references Section 6(5) for special rules for payment.

Section 6(1) reads as follows:

In a purchase transaction of any of the following items, the only methods of payment a scrap metal dealer may use to pay a seller are a direct deposit or electronic transfer to the seller's account at a financial institution; subject to subsection (5), payment with a check or money order described in Section 5(1)(a); or, subject to subsection (5) payment with an electronic payment card or encrypted receipt described in section 5(1)(a)(ii):

- (a) Catalytic converters....
- (b) Air conditioners....
- (c) Copper wire....

Section 6(5) reads as follows:

"If the purchase price in a (emphasis added) purchase transaction described in subsection (1) is \$25 or more, or if the purchase price for all of a seller's purchase transactions in a business day is \$25 or more, the scrap metal dealer must pay the seller by mailing 1 of the following items to the seller at the address shown on the identification card presented under section 5(2)(a), and shall not deliver that payment in person or using any other form of payment in person or using any other form of delivery:

- (a) A check or money order described in section 5(1)(a)(i).
- (b) An electronic payment card or encrypted receipt described in section 5(1)(a)(ii).
- (c) A nontransferable receipt that the seller may redeem at the scrap dealer's premises for 1 of the items described in subdivision (a) or (b).

Section 5(1)(b)(ii) states that the payment requirements of section 6(1), i.e., with respect to only the High Theft Items, and by direction through Section 6(1) the mailing requirements provided for in Section 6(5), do not apply to purchase transactions with industrial or commercial customers.

B. Michigan Attorney General Opinion No. 7281

On March 27, 2015, Attorney General Bill Schuette issued Opinion No. 7281 which stated in part that Section 6(5) of the Act, requiring payment by mail, applied to all purchase transactions for all types of scrap metal, i.e. not limited to the High Theft Items, with a seller whose collective sales for a business day totaled \$25.00 or more. The

opinion is contrary to the direct language of the Act and is inconsistent with the legislative history addressing the mailing of payment.

The AG's opinion is contrary to the precise language of Section 6(5) when read in its entirety. Knowledge of the legislative history assists, but is not a prerequisite, to the correct reading of Section 6(5). If the legislature intended that Section 6(5) was to apply to all forms of scrap and not just to the High Theft Items, there would have been no need or reason for the legislature to follow the introductory phrase "If the purchase price", with the words "in a purchase transaction described in subsection (1) is \$25 or more, or if the purchase price". If the legislature intended that all forms of scrap metal were to be covered under Section 6(5), Section 6(5) would have read: "If the purchase price for all of a seller's purchase transactions in a business day is \$25 or more, the scrap metal dealer must pay the seller by mailing...."

C. Legislative history of the provisions addressing the High Theft Items listed in Section 6(1) (a) to (c).

1. Representatives Tlaib and Muxlow introduced HB 5490 on March 20, 2012, the precursor to HB 4593 passed by the House on October 31, 2013. That bill did not receive sufficient support in its form to move forward and was not reported out of committee. Notably, HB 5490 at Section 5(1)(A) mandated that all payment for purchases of all scrap metal were to be mailed after a three business day delay.
2. On April 18, 2013 Representatives Talib and Muxlow introduced HBs 4593 and 4594. Section 5 of HB 4594 addressed the form and timing of payment. The requirement for mailing payment after a three business day delay for all purchase transactions provided for in HB 5490 was rejected. As introduced, HB 4594 Section 5(1)(A) authorized immediate payment by check, money order or electronic payment card or encrypted receipt with no mailing requirement for purchase transactions of all scrap metal. Section 5(1)(B) provided special rules for only catalytic converters, air conditioners, air conditioner components and copper wire ("High Theft Items"). For the High Theft Items, Section 5(1)(B) directed that payment could only made after a three business day delay and when made, the form of payment was limited to either direct transfer to the seller's bank account or by mailing a check to the seller. Thus HB 4594 adopted a mailing requirement for only purchase transactions of the High Theft Items. The three day delay and mailing requirement did not apply for purchase transactions of the High Theft Items with industrial or commercial accounts, Section 5(1)(C). After introduction, further changes were made to Section 5(1)(B). HB 4594 was ultimately incorporated into HB 4593.
3. The House passed a substitute for HB 4593 on October 31, 2013. As passed Section 5(B) contained the payment directives of HB 4594 as introduced with additional

provision relating to the High Theft Items. As passed, Section 5(1)(B) added the use of payment cards and encrypted receipts, to the use of checks as permissible forms of payment when mailing after the three business day delay. Additionally, and as an alternative to mailing, Section 5(1)(B) allowed the seller to return to the scrap metal dealer's location after the three business day delay for payment by check, money order or payment card or encrypted receipt. .

4. As passed, HB 4593 provided for payment by mail in purchase transactions for only the High Theft Items.
5. The Senate passed a substitute for Substitute House Bill 4593 on December 11, 2013. Section 5(1)(B) of the House substituted version passed on October 31, 2013 was removed by the Senate in its entirety. The Senate introduced Section 5(1)(A) with the phrase, "Unless Section 6 applies...", deleted section 5(1)(B) from the House bill in its entirety, and added a new Section 6. Section 6 in its entirety and in each subsection addresses regulatory oversight for only the High Theft Items. Section 6(1) of the Senate Substitute provided for the method and timing of the payment to the Seller for High Theft Items identical to that as provided in the House version of 4593 passed on October 31, 2013. However, the Senate added Section 6(2) which provided for the elimination of the special treatment for the High Theft Items if a data base is implemented by industry in consultation with the Michigan State Police.
6. **Section 5(1)(B) of HB 4593 as passed by the House on October 31 and Section 6 of the Senate Substitute passed by the Senate on December 11, 2013 addressed only the High Theft Items. Neither Section 5(1)(B) of HB 4593 nor Section 6 of the Senate Substitute addresses any other types of scrap metal.**
7. On March 19, 2014 the House passed version 6 of HB 4593 in full substitute of the Senate Substitute **after rejecting** amendments proposed by Representative Tlaib who had been a bill sponsor of various versions of House Bill 4593, see below. The House substitute retained the introductory phrase in Section 5(1)(A) "Unless Section 6 applies..." , but rejected Section 6(2) of the Senate Substitute (which would have eliminated the special regulatory oversight of the High Theft Items upon implementation of the data base) and added Section 6(5) which required mailing of payment when the transactions for the High Theft Items are \$25 or more in a single transaction or are \$25 or more of the High Theft Items in multiple transactions in a single business day. The House rejected the provision in the Senate bill which would have eliminated mailing after implementation of a data base but in the compromise reached among the Administration, the House, and the Senate, Section 6(5) was added which established the \$25 thresholds to purchases of the High Theft Items requiring mailing of payment only after those thresholds were reached. Thus, although mailing of payment for the High Theft Items would not be eliminated upon

establishing the data base, only payment for those singular purchase transactions of High Theft Items in excess of the \$25 threshold would require mailing, and to assure that a seller did not attempt to abrogate the rule, a \$25 threshold for multiple transactions of High Theft Items in a business day was included which when reached, mailing was required.

8. As reflected in the House journal on March 19, 2014, Representative Tlaib offered four motions. All of which were rejected by the House.
 - a. The first was to substitute H-3 for Senate substitute S-9. Section 5(B) of H-3 (lines 6 through 17) on page 7 would have required that payment for the High Theft Items could be made only by mailing a check or money order after three business days. It is obvious that the bill sponsors had long dropped the effort of requiring mailing for all scrap metal purchased as they had proposed in HB 5490.
 - b. The second motion attempted to require, as opposed to allow, industry to build the database described in Section 6(2). If the database was established, Section 6(2) required the reporting of purchases of only the High Theft Items.
 - c. The third motion requested that that the introductory phrase of Section 6(5) "If the purchase price" be deleted, and secondly that the words "is \$25 or more, or if the purchase price for all of a seller's purchase transactions in a business day is \$25 or more" be deleted.
 - i. Had this amendment been adopted, although Section 6(5) would have retained the additional regulatory oversight of the High Theft Items, it would have required mailing of payment to the seller regardless of the amount of the purchase price of the High Theft Items. Had the amendment been adopted, Section 6(5) would have read:

"In a Purchase Transaction described in subsection (1), the scrap metal dealer must pay the seller by mailing 1 of the following items to the seller at the address shown on the identification card presented under Section 5(2)(A) and shall not deliver that payment in person or using any other form of delivery:...
 - ii. It is clear that the bill sponsors understood that Section 6(5) applied only to the High Theft Items, otherwise the proposed amendment would also have proposed deleting the phrase "described in subsection (1)". Additionally, the bill sponsor publically expressed concern that each of the \$25 thresholds presented an opportunity to skirt the statute and that is why each threshold was proposed to be removed under the amendment. The obvious purpose of the amendment was to remove both \$25 thresholds in connection with purchase transactions of only

the High Theft Items. The conclusion is inescapable that Section 6(5) was regulating only High Theft Items.

- iii. It is noteworthy that the bill sponsor's proposed amendment if adopted would have deleted the phrase "or if the purchase price for all of a seller's purchase transactions in a business day is \$25 or more". That phrase is the language of Section 6(5) which the AG relies upon as supporting his conclusion that the legislature's use of the word "all" in that phrase must have been used to include all forms of scrap metal not just the High Theft Items. What the AG opinion unfortunately overlooks is the legislative history regarding the mailing of payment and the public statements of the bill sponsor regarding the \$25 thresholds. The bill sponsors of the foregoing amendment first introduced HB 5490 which would have required mailing for all purchase transactions, which requirement, as noted above, was rejected. If the phrase "or if the purchase price for all of a seller's purchase transactions in a business day is \$25 or more" was intended to include all scrap metal, as has been asserted by the AG, the very sponsors of the amendment who had sponsored HB 5490 would not have proposed an amendment removing a mailing requirement for all scrap metal even if it was to only apply to purchase transactions when exceeding \$25 in a business day. Surely a half a loaf is better than no loaf at all. If the bill sponsors expected that mailing was required under Section 6(5) for all purchase transactions of a seller in a business day when exceeding \$25, the bill sponsors would most certainly not have proposed removing this phrase under any circumstances and surely would have proposed removing the phrase "described in subsection 1".
- d. The fourth motion proposed a new subsection 6 to Section 6. Had this amendment been adopted, although subsection 5 would have retained the additional regulatory oversight of the High Theft Items it would have required mailing of payment to the seller regardless of the amount of the purchase price in the purchase transaction if Michigan was listed by the National Insurance Crime Bureau as one of the top ten states for insurance claims related to metal theft 12 months after the effective date of the act. If adopted, subsection 6 of Section 6 would have read as follows:
 - i. (6) Beginning 12 months after the effective date of the amendatory act that added this subsection, if this state is still 1 of the 10 states with the highest number of insurance claims for metal theft in the united states, as recorded by the National Insurance Crime Bureau, the only methods

of payment that a scrap metal dealer shall use in any purchase transaction of any of the items described in subsection (1)(A) to (C), are a direct deposit to the seller's account at a financial institution, or payment by check or money order mailed to the seller at the address shown on the identification card presented under section 5(2)(A).

- ii. Again, if the bill sponsors thought that subsection 5 applied to other than the High Theft Items, the foregoing amendment would have required mailing for all purchase transactions not limited to purchase transaction of the High Theft Items.
- e. **Notably, consistent with the legislative history of HB 4593 attendant to the provisions addressing the High Theft Items and the mailing of payment, each of the amendments offered by Representative Tlaib to Section 6 address only the High Theft Items. Representative Tlaib's amendatory effort through the third and fourth motions was directed to remove the \$25 threshold for ONLY the High Theft Items both if the High Theft Items were sold in a single or in multiple transactions in a business day, thereby requiring mailing on the purchase of any of the High Theft Items regardless of amount. As these amendments were rejected, the \$25 threshold remained in place and applicable to the purchase price for High Theft Items as directed under subsection 6(1) thereby requiring mailing of payment only when the purchase price for the High Theft Items either in an individual or multiple transactions in a business day exceed \$25.**

CONCLUSION

Section 6 and its subsections apply to only purchase transactions of the High Theft Items and further the \$25 thresholds provided for in Section 6(5) address only the purchase price of the High Theft Items independent of the purchase price for any other scrap metal.

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Respectfully submitted



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